

St. Regis Mohawk Indian Reservation
St. Regis Mohawk Tribal Court

RALPH DAVID,

Complainant/Appellant

ST. REGIS MOHAWK TRIBE,
Respondent/Cross-Appellant

DECISION ON MOTION
SEEKING DEFAULT JUDGMENT

14-LND-00003

Procedural History

On October 16, 2014, Appellant Ralph David, by his attorney Lorraine M. White, Esq., filed a Notice of Appeal from the St. Regis Mohawk Land Dispute "...Tribunal...or...the Tribal Council land dispute decision dated, September 17, 2014." (See "Notice of Appeal Land Dispute Ordinance", Ralph J. David) This Notice of Appeal also set forth the basis for the appeal.

On October 20, 2014, an Affidavit of Service by Mail was filed with the Court.

On October 17, 2014, Respondent/Cross-Appellant SRMT Tribal Council, through the SRMT Office of General Counsel, (Danielle Lazore Thompson, of counsel), also filed Notice of Appeal from the LDT Decision/Order dated September 17, 2014. This filing was accompanied by an appellate brief-type setting forth SRMT's arguments in support of their appeal.

On October 21, 2014, SRMT filed "Proof of Service" upon Ralph David and his counsel, Ms Lorraine White. This "Proof of Service" form¹ states that the process server served a copy of "the summons and attached complaint" upon Complainant/Appellant and counsel on October 20, 2015, and was filed with a copy of a "20-DAY CIVIL SUMMONS", which summons and requests that Appellant Ralph David serve and file with the Court "a written answer to the complaint/petition, which is hereby served".

Both parties used the land dispute Notice of Appeal form in accordance with the Land Dispute Resolution Ordinance, (LDRO), Section XV(A)(3)

On November 6, 2014, "[i]n response to the 20-Day Civil Summons" Mr. Ralph David's Counsel filed a "Notice of Appearance" in this matter.

SRMT contends in support of this Motion seeking Default Judgment that this "Notice of Appearance is not a permissible substitute for an Answer and to date, no Answer has been served within the time allowed by Tribal Law." SRMT notes that the parties "agreed to a two-week

¹ This "Proof of Service" form complies with the service requirement of the SRMT Rules of Civil Procedure Section IX (D), [Rule 6]

extension which expired December 15, 2014 and Default has now entered against [Mr. David]”.
SRMT Attorney Affidavit, dated February 12, 2015,

Other subsequent filings include the following:

On November 10, 2014, SRMT Tribal Council, as Respondent in this Appeal, filed a Motion to DISMISS the appeal on the ground that “the Land Dispute Tribunal had no jurisdiction to consider the claim filed against the tribe”. No proof of service was filed with this motion.

On January 15, 2015, SRMT Tribal Council filed another motion, specifically a Motion seeking Joinder of Parties in this appeal, specifically seeking joinder of Judith and David Printup as parties. No proof of service was provided with this motion.

This Decision will address the SRMT’s Motion Seeking Default Judgment and the Complainant/Appellant Ralph David’s Reply.

The SRMT contends in their Attorney Affidavit submitted in support of the Motion that:

- (1) on October 20, 2014, a Notice of Appeal from the LDT decision was served on Mr. David ;
- (2) on November 6, 2014, Counsel for Mr. David “served a Notice of Appearance which is not a permissible substitute for an Answer and to date no Answer has been served...” in accordance with SRMT Rules of Civil Procedure, Rule 8;
- (3) Counsel for Mr. David sought additional time to respond and the parties agreed to a two week extension which expired on December 15, 2014;
- (4) SRMT requests that the Court enter a judgment of default against Mr. David pursuant to Rule 10 of the SRMT Rules of Civil Procedure and dismiss the Land Dispute Tribunal (LDT)’s Decision in this matter for lack of subject matter jurisdiction over the SRMT.

Counsel for Mr. David argues in the Reply that:

- (1) Neither the SRMT Rules of Civil Procedure nor the SRMT Land Dispute Resolution Ordinance, (LDRO) define specific filing/pleading requirements for “appeals” of Land Dispute Tribunal decisions;
- (2) Although SRMT Rules of Civil Procedure, Rule 20, Proceeding After Judgment, addresses a procedure for an appeal from a final civil decision/judgment of the Tribal Court, “there is no parallel process nor procedure provided for appeals from...” the SRMT Land Dispute Tribunal (LDT) Decisions;

- (3) SRMT's contention that a default was committed by Mr. David because he filed a "Notice of Appearance" instead of an "Answer" incorrectly relies upon SRMT Rules of Civil Procedure Rule 8
- (4) SRMT's "motions" are insufficient and must fail for lack of proper service.

Discussion

SRMT Civil Code Section V, entitled Applicable Law prioritizes the principles of law to be applied in SRMT civil disputes. Written Mohawk laws such as the Land Dispute Resolution Ordinance and Rules of Civil Procedure, adopted by the recognized governmental system of the Mohawk Tribe, are given precedence, second only to such portions of the US Constitution and federal law which are "clearly applicable in Mohawk Indian Country".

LDRO Section XV, entitled "Appeals to the Tribal Court", sets forth the procedures to be employed in filing an appeal to SRMT Tribal Court from a Tribal Council or LDT land dispute decision. Section XV provides what can only be described as general procedural guidance for appealing a land dispute decision of the Tribal Council or the LDT. These general procedural guidelines are limited to: defining the appropriate parties to an appeal, [LDRO XV(A)(1)]; filing deadlines, [LDRO XV(A)(2)]; and the requirement of the use of a particular form for the filing of a Notice of Appeal, [LDRO XV(A)(3)]

LDRO XV(A)(3) states that an individual filing an appeal from an LDT Decision to the Tribal Court "...must file a Notice of Appeal on a form designated by the Tribal Court Administrator, which shall contain whatever information mandated by the Court administrator pursuant to Tribal Court Rules." The Court approved form entitled "Notice of Appeal (Land Dispute Ordinance)" contains no mention of the requirement of any type of response or acknowledgment by the responding party, as the LDRO itself is mute on this issue. The Court also notes that both parties in this matter have filed the designated form "Notice of Appeal Land Dispute Ordinance", initiating their respective appeal and cross-appeal, and neither party has filed any responsive or reply pleading, (although several motions were subsequently filed by SRMT).² Because the LDRO specifically addresses the procedure for filing an appeal to the Tribal Court, we must find that the Rules of Civil Procedure, (in Section I (C [Rule 6](A)) which states that "[t]o start a civil lawsuit in Tribal Court, a person shall first file a written complaint with the Court Clerk", and the ensuing rules, which require the issuance of a Summons, [Rule 6 (B)], and that an Answer must be filed within 20 days, [Rule 8(A)], do NOT apply to the filing of a land dispute appeal from a Tribal Council decision or an LDT land dispute decision. We find that the LDRO Notice of Appeal is used in its place.

Although the LDRO also sets forth standards for the Tribal Court's review of appeals from a Tribal Council decision or an LDT land dispute decisions, (see Section XV(B) and C), it

² The Court also notes that Appellant David's initial filing - a Notice of Appeal from the LDT Decision - has provided "sufficient information" to identify the claim being made. See *Cook v Cook*, 13-CIV-00006.

provides no additional direction as to what procedural rules or body of law should be applied beyond the filing of the Notice of Appeal. Upon further scrutiny, the Court can find no direct authority in the LDRO or Rules of Civil Procedure which places the review of these appeals squarely within the purview of the SRMT Rules of Civil Procedure.

In some of our cases decided under the LDRO we have relied upon the “Applicable Law” language in the Civil Code for procedural direction and have held fast to the ‘spirit’ of the SRMT Rules of Civil Procedure. In *White v White*, 10-LND-00009 , an appeal directly to the Tribal Court from a Tribal Council Decision, we held that in “determining land disputes one must look first to the SRMT LDRO...” in conjunction with other “applicable law” as set forth in the SRMT Civil Code, Section V. We have adhered to the SRMT Rules of Civil Procedure so that rules will be present and readily available to all parties. This can ensure there is some continuity with respect to notice requirements, the opportunity to be heard, and the opportunity for persons and litigants to make requests to the Court. The Court readily admits that this process has been, by no means, perfect. For instance, although the Court follows the SRMT Rules of Civil Procedure it is clear that the Land Dispute Tribunal is not bound by these procedural guidelines, (see LDRO Sections VIII, X, XIV,XV), and as such, the LDT may conduct their proceedings subject only to the LDRO, free from the strictures of the SRMT Rules of Civil Procedure.³ This confusion is compounded by the fact that an “appeal” of a LDT decision is to be pursued in SRMT Court based upon the “record” developed at the LDT - a record developed free of the rules contained in the SRMT Rules of Civil Procedure , which the Court must adhere to.

We must also consider however, that the LDRO does permit the Court to “suspend the SRMT Rules of Civil Procedure” upon an appeal to the Tribal Court and to “adopt such rules as may be appropriate to review cases brought pursuant to [the LDRO].” See Section XV(A)(4). At no time in the history of the SRMT Tribal Court has the Court found it appropriate to suspend the SRMT Rules of Civil Procedure. The Court is of the opinion that any such suspension would result in a state of chaos, leaving the Court with no procedural law upon which to rely. We can also add that the Court is bound by the SRMT Judiciary Code which states that the Tribal Court, (unlike the LDRO which grants the LDT “the authority to develop other rules and regulations as necessary...”), does not have ‘sole authority’ to promulgate rules, (cf. LDRO Section XV(A)(4), which provides that “the Tribal Court may suspend the Rules of Civil Procedure and shall adopt such rules as may be appropriate to review cases brought pursuant to this Ordinance.”) See Judiciary Code Section VI(3) .

Upon consideration of the foregoing, the Court is of the opinion that it is appropriate to rely upon the SRMT Rules of Civil Procedure, (and the Civil Code), to provide procedural

³ See also *Sawyer v Laughing*, 12-LND-00004 recognizing that the LDT does not appear to permit direct or cross-examination.

guidelines for all “post-filing” proceedings⁴ on appeals to the Tribal Court from land dispute decisions of the Tribal Council or the LDT.

As noted, the SRMT has filed several motions in this matter; a Motion to Dismiss Mr. David’s appeal, filed on November 10, 2014; a Motion seeking Joinder of Parties, filed on January 16, 2015 and this most recent Motion Seeking Default Judgment. As stated, the Court finds it appropriate to apply the Rules of Civil Procedure to these post-filing proceedings.

As Counsel for Mr. David correctly points out, the SRMT Rules of Civil Procedure Section XVI require that motions be made on Notice to the opposing party. Rule 13 states that, if not made during a hearing or trial;

“...the moving party shall notify other parties of the nature and basis of the motion and the hearing time at least ten (10) days before the motion is presented in Court, so the responding party has a chance to plan a response. The notice required in this section shall be called a Notice of Motion, shall be in writing, and shall be served upon the party, orthe party’s counsel...”. RCP, Section XV [Rule 13] (B), (emphasis added)

Rule 10 of the SRMT Rules of Civil Procedure Section XII (A), which addresses “Default” also states that:

“No judgment of default shall be made, however, unless the plaintiff makes a written motion for default judgment and serves a copy of the motion on each defendant. If defendant files an answer to the complaint at or before the time the motion is to be argued to the Judge, no default judgment shall be granted, and the matter shall proceed as though answered on time. If defendant does not answer by that time, a default judgment shall be entered.” RCP, Section XII [Rule 10] (A)

Rules of Civil Procedure Section XIII(B) [Rule 10], further state that :

“In granting a default judgment, the Judge may refuse to grant relief requested by plaintiff if granting the relief would be contrary to Tribal law or would be unjust...”

⁴ In the case at bar, both parties are represented by counsel. This circumstance creates a somewhat atypical procedural history in cases before the Court and the LDT, whereby a more technical reading and interpretation of SRMT laws is required. But the Court must also consider that interpreting the Land Dispute Resolution Ordinance and/ or the Rules of Civil Procedure to require parties to comply with more technical interpretations of the law may very well defeat the purpose of the Land Dispute Resolution Ordinance which is “to provide a fair and equitable procedure for resolving land disputes within the St. Regis Mohawk Tribe’s jurisdiction”. (See LDRO Section III); See also RCP Section IX [Rule 6] containing provisions for litigants who are “unable to prepare a written complaint”). This is especially true as to the filing of appeals from the more informal LDT proceeding, where most litigants appear Pro Se. Strict interpretations of procedural rules may prejudice future pro se litigants as well.

We have interpreted this language as implying that default judgments are not to be “lightly rendered”. *Cook v Cook*, 13 CIV-00006. We have also noted that when other remedies ‘less harsh’ than a default judgment are available, those remedies should be utilized prior to any default judgment. See *Cook v Cook*, supra, citing RCP XIII,[Rule10] (B). This is particularly true in the land dispute cases where the Court serves not only as the Court of ‘first impression’, but is also the last court of appeal for land dispute decisions, which are final when rendered by the SRMT Court. See SRMT LDRO Section XV(D)

The Court also notes that although attorneys may naturally gravitate toward a detailed analysis of procedural rules when filing or responding to motions, the Court is wary to interpret any procedural rules so strictly that a default judgment would be granted under these circumstances, particularly when the LDRO does not address, or set any timetable for, the filing of a response to an appeal from an LDT decision,. This is an even greater concern when the Court is not in possession of a complete ‘record’ associated with these appeals.⁵

Because the Court has found that the LDRO - and not RCP Rule 8 – governs the procedure for the filing of appeals to the Tribal Court from a Tribal Council land dispute decision or an LDT land dispute decisions; AND that once filed, the appeal must follow the Rules of Civil Procedure, the Court finds that the SRMT Motion seeking a Default Judgment was not properly filed on Notice to the opposing party in accordance with RCP Rule 13, and that no proof of service was provided.

Based upon all of the foregoing, the Court hereby denies the Motion seeking Default judgment.

With respect to the remaining Motion to Dismiss and Motion Seeking Joinder, the Court will require that SRMT serve these Motions on Counsel for Mr. David and file with the Court an Affidavit of Service. Counsel for Mr. David shall have a period of thirty (30) days from the date of service to respond to these Motions.

The Court also notes its recommendation that in the future, the preferred practice should be for motions to be filed in one submission as opposed to several filings, which tends to have a dilatory effect on the proceedings.

⁵ The Court further notes that the LDRO does not provide any procedural or substantive requirements for the transfer of the record to the Tribal Court upon the filing of a Notice of Appeal from a land dispute decision. Not surprisingly, the Tribal Court has at times received no record, and often receives an incomplete record.

This constitutes the Decision and Order of the Court.

DATED:

April 2, 2015



PETER J. HERNE, Chief Judge
ST. REGIS MOHAWK TRIBAL COURT

